IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1474 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SAMIBEN SULEMAN

Versus

BHARVAD BAI KHIMIBEN NANUBHAI

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Appearance: MR DD VYAS for the Petitioner.
NOTICE SERVED for Respondent No. 1-9

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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/03/2004

ORAL JUDGEMENT

The petitioner is the original defendant, against whom the respondents filed a suit, being Regular Civil Suit No.77 of 1981, in the Court of Civil Judge (Junior Division), Dhrangadhra, for getting possession of the suit premises on the ground of arrears of rent.

The petitioner is the tenant of the suit premises, which is situated in Mochivad area in the City of Dhrangadhra. Since the defendant was not paying the rent regularly, the plaintiffs gave a notice, as contemplated under the provisions of the Bombay Rent Act, demanding such arrears of rent. The defendant was in

arrears of rent for more than six years. It seems that the notice was not replied by the defendant. The plaintiffs, therefore, filed the suit for getting arrears of rent and for getting possession of the suit premises.

The defendant appeared in the Suit and filed written statement at Exhibit 11. In the written statement, the defendant denied the case of the plaintiff about non-payment of rent on her part. According to her, rent was paid, but no receipts were given to her by the landlord.

After considering the evidence on record, the trial court came to the conclusion that the plaintiffs successfully proved that the defendant had not paid rent for more than six months. The Court has also considered the fact that the defendant has not even replied to the notice issued by the landlord and, ultimately, a decree for possession under Section 12(3)(a) of the Bombay Rent Act is passed by the trial court.

The said decree was challenged by the present petitioner before the appellate court. The appellate court has also confirmed the said finding. The appellate court has come to the conclusion that the defendant is not ready and willing to pay the rent.

In Arjun Khiamal Kakhijani v. Jamnadas C. Tuliani & Ors., XXXI(1) GLR 209, the Apex Court held that once the case falls under Section 12(3)(a) of the Bombay Rent Act, the Court has no alternative but to pass a decree for eviction. The relevant observations of the Apex Court read as under :-

" ... ... ...

6. It has been urged by the learned counsel for the tenants that 14th November 1967 was the first day of hearing of the suit and since in pursuance of an order passed by the Trial Court on that day, the tenants had deposited the entire arrears of rent on 9th January 1968 within the time granted by the Court and continued to deposit the monthly rent thereafter they could not be treated as defaulters in payment of rent even if the amendment made in sub-section (3) of Section 12 by the Amendment Act 18 of 1987 was ignored. We, however, find it difficult to agree with this submission. It is not denied that the arrears of rent which were for a period of more than six months and in respect of which a notice of demand

had been served on the tenants under sub-section (2) of Section 12 of the Act had not been paid by the tenants to the landlord within one month of the service of the notice. It is also not denied that during the said period of one month, no dispute regarding the amount of standard rent or permitted increases was raised by the tenants. On a plain reading of clause (a) of sub-section (3) of Section 12 of the Act as it stood at the relevant time, the said clause was clearly attracted and the consequence provided therein had to follow namely a decree for eviction against the tenants had to be passed. Clause (b) of sub-section (3) on the face of it was not attracted inasmuch. as the said clause applied only to a case not covered by clause (a). This is amply borne out by the use of the opening words "In any other case" of clause (b). In Harbanslal Jagmohandas and Anr. v. Prabhudas Shivlal, [1977] 1 S.C.C. page 576, these clauses (a) and (b) of sub-section (3) of Section 12 of the Act came up for consideration and it was held that the tenant can claim protection from the operation of the Section 12(3)(a) of the Act only if he makes an application raising a dispute as to standard rent within one month of the service of the notice terminating the tenancy. In the instant case this had not admittedly been done by the tenants. The consequence of non-payment of arrears of rent claimed in the notice of demand was, therefore, inevitable. In Jaywant S. Kulkarni and Others v. Minochar Dosabhai Shroff and Others, [1988] 4 S.C.C.p.108, clauses (a) and (b) of sub-section 3 of Section 12 again came up for consideration. It was held:

"Sub-section (3)(a) of Section 12 categorically provided that where the rent was payable by the month and there was no dispute regarding the amount of standard rent or permitted increases, if such rent or increases were in arrears for a period of six months or more and the tenant neglected to make payment thereof until the expiration of the period of one month after notice referred to in subsection (2), the court shall pass a decree for eviction in any such suit for recovery of possession. In the instant case, as has been found by the

> court, the rent is payable month by month. There is no dispute regarding the amount of standard rent or permitted increases. Such rent or increases are in arrears for a period of six months or more. The tenant had neglected to make payment until the expiration of the period of one month after notice referred to in subsection (2). The Court was bound to pass a decree for eviction in any such suit for recovery of possession."
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> ... ... ...."

In view of the finding of fact arrived at by both the courts below and considering the decision of the Apex Court in XXXI (1) GLR 209 (supra), wherein it is held that if the case falls under Section 12(3)(a) of the Bombay Rent Act, the Court has no discretion but to pass a decree for eviction, the judgment passed by the appellate court is not required to be interfered with by this Court in this Civil Revision Application. This Civil Revision Application is, therefore, dismissed. Rule is discharged. Interim relief is vacated. No costs.

At this stage, Mr.Vyas submitted that the petitioner is in a poor financial situation and some time may be given to the petitioner for vacating the suit premises. Considering the facts and circumstances of the case, the petitioner is given one year's time for vacating the suit premises. The decree for possession is not to be executed till 31st March, 2005. However, the petitioner is directed to file usual undertaking before this Court within a period of two months from today. In such undertaking, she will have to expressly state that she is in exclusive possession of the suit premises and without any obstruction in any manner, the petitioner will hand over the vacant possession to the respondents and that, in the meanwhile, she will not part with the possession of the suit premises. In case such undertaking is not filed, it will be open for the landlord to execute the decree for possession after the aforesaid period of two months.

11th March, 2004 ( P.B. Majmudar, J. )

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(apj)